

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
GARY AND LUCIE BOCK )

For Appellants: Gary and Lucie Bock,  
in pro. per.

For Respondent: Allen R. Wildermuth  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Gary and Lucie Bock against a proposed assessment of personal income tax and penalties in the total amount of \$56,210.11 for the year 1376.

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The issue presented by this appeal is whether appellants have 'established error in respondent's proposed assessment of 'personal income tax or in the penalties assessed for the year in issue.

The subject proposed **assessment** was **issued** after appellants failed to comply with respondent's demand that they file a personal income tax return: for the year 1976. Respondent **based its** estimation of appellants' income for the appeal year upon the results of an investigation which disclosed that: (i) appellants had **sold several** of their rental properties in 7376; (ii) appellant-husband had been self-employed as an attorney during the appeal year, but was no longer, a member of the State Bar; and (iii) appellants had deposited a total of \$359,031.82 in various bank accounts in 1976, **including two** deposits in the amounts of \$276,333 and \$61,319.82. Based upon its **investigation**, respondent determined that appellants' income had been derived 'from the rental and sale of their **aforementioned** properties, **and** that their bank deposits represented their 1976 income. The proposed assessment includes penalties for failure to file a return, failure to file upon notice and **demand**, failure to pay estimated income tax, and negligence.

Respondent's determinations of tax are presumptively correct, and the taxpayer bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Where the taxpayer files no return and refuses to cooperate in the ascertainment of his income, respondent has great latitude in determining -the amount of tax liability, and may use reasonable estimates to establish the taxpayer's income. (See, e.g., Joseph F. Giddio, 54 T.C. 1530 (1970); Norman Thomas, ¶ 80,359 P-H Memo. T.C (1980); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).) In reaching this conclusion, the courts have invoked the rule that the failure of a party to introduce evidence which is within his control gives rise to the presumption that, if provided; it would be unfavorable. (See Joseph F. Giddio, supra, and the cases cited therein.) To hold otherwise would establish skillful concealment as an invincible barrier to the determination of tax liability. (Joseph F. Giddio, supra.)

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Since appellants have failed to provide any **evidence establishing** that respondent's determination was excessive or without foundation, we must conclude **that they have failed** to carry their burden of proof.

In support of their position, appellants have advanced a host of familiar contentions, including, inter alia, that Federal Reserve notes do not constitute lawful money or legal tender, that California's personal income tax cannot be applied to individuals because it constitutes an unconstitutional unapportioned direct tax, and that this board lacks jurisdiction to hear and determine appeals involving deficiency assessments of personal income tax. Each of these "arguments" was rejected as being without merit in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982. We see no reason to depart from that decision in this appeal.

On the basis of the evidence before us, we conclude that respondent properly computed appellants' tax liability, and that the imposition of penalties was fully justified. Respondent's action in this matter will, therefore, be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Gary and Lucie Bock against a proposed assessment of personal income tax and penalties in the total amount of \$56,210.11 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of March , 1983, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Nevins and Mr. Harvey present.

\_\_\_\_\_, Chairman  
Ernest J. Dronenburg, Jr. \_\_\_\_\_, Member  
Conway H. Collis \_\_\_\_\_, Member  
Richard Nevins \_\_\_\_\_, Member  
Walter Harvey\* \_\_\_\_\_, Member

\*For Kenneth Cory, per Government Code Section 7.9

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<u>Richard Nevins</u>	, Chairman
<u>William M. Bennett</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Walter Harvey*</u>	, Member
<u>                    </u>	, Member

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